

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV-06-0830 LH/LCS
CR-05-2443 LH

ARMANDO PEDREGON-ORTIZ,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant's motion to vacate, set aside, or correct sentence (CV Doc. 1; CR Doc. 25) filed September 6, 2006. *See* 8 U.S.C. § 2255 R.4. Defendant pled guilty to an information charging reentry of a deported alien previously convicted of an aggravated felony. *See* 8 U.S.C. § 1326(a)(1)-(2), (b)(2). On April 26, 2006, the Court entered judgment on Defendant's conviction. Defendant did not appeal his conviction or sentence. He claims that, to the extent the Court calculated his sentence based on a prior conviction, the sentence is unconstitutional under *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and *Shepard v. United States*, 544 U.S. 13 (2005).

Current precedent precludes the substantive relief that Defendant seeks under *Almendarez-Torres* and *Shepard*. *See United States v. Moore*, 401 F.3d 1220, 1224 (10th Cir. 2005).

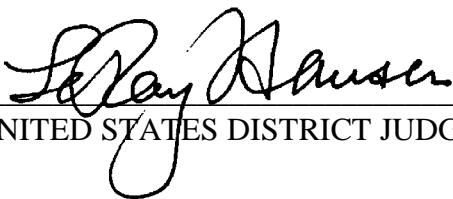
As the United States Court of Appeals for the Tenth Circuit has stated,

We note that in the recent case of *Shepard v. United States*, No. 03-9168, 544 U.S. ___, 2005 WL 516494 (Mar. 7, 2005), Justice Thomas stated that a majority of the Court now recognizes that *Almendarez-Torres* was wrongly decided. Justice Thomas also predicted that *Almendarez-Torres* would be overruled sometime in the near future. Nonetheless, "we are bound by existing precedent to hold that the *Almendarez-Torres* exception to the rule announced in *Apprendi* [*v. New Jersey*, 530

U.S. 466 (2000)] and extended to the Guidelines in [*United States v.*] *Booker*, [125 S. Ct. 738 (2005)] remains good law.”

United States v. Jeffrey, No. 04-8009, 2005 WL 827153, at *18 n.12 (10th Cir. Apr. 11, 2005) (quoting *Moore*, 401 F.3d at 1224). The decisions in *Almendarez-Torres* and *Shepard* provide no support for Defendant’s claims, and his § 2255 motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant’s motion to vacate, set aside, or correct sentence (CV Doc. 1; CR Doc. 25) filed September 6, 2006, is DISMISSED with prejudice; and judgment will be entered.


UNITED STATES DISTRICT JUDGE